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BEST AVAILABLE COPY**REMARKS**

Upon reviewing this application, it has come to the attention of the undersigned that all of the prior art which was timely and properly made of record in this case has not been substantively considered by the Examiner. Specifically, the Applicant prepared and timely filed an Information Disclosure Statement, along with PTO/SB/08a and copies of the necessary citations (a copy of the returned postcard, the submitted Statement and PTO/SB/08a is attached, if copies of the citations are again required, please immediately contact the undersigned), under a December 19, 2005 Certificate of Mailing Date. The Examiner has not confirmed to the undersigned, by signing and returning a copy of PTO/SB/08a, that such references were substantively considered. Accordingly, the Applicant respectfully requests the Examiner consider the same at this time.

As all of this prior art was previously made of record in this case in a timely manner, it is respectfully submitted that Petition and/or an official fee is **not** necessary and the Examiner is required to substantively consider the same at this time. If any further action on the part of the Applicant is required in order for the Examiner to substantively consider this art, the Examiner is respectfully requested to contact the undersigned attorney immediately.

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. The rejected claims are accordingly rewritten, by the above new claims, and the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections.

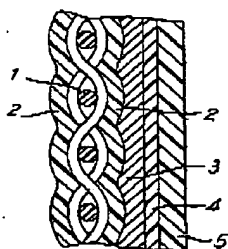
Claims 1-5, 8, 9, and 12, now claims 14-18, 21, 22 and 27, are rejected, under 35 U.S.C. § 102(b), as being anticipated by Pusch et al. '608. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the above new claims and the following remarks.

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Observing the only Figure from the applied reference below, Pusch '608 discloses a camouflage material made of a base layer of fabric 1. The base layer of fabric 1 has plastic 2 coated to both it's front and back sides. Next, on one side of the fabric atop the plastic coating is layered a metallized coating 3 covered in turn by a binder layer 4 and finally a pigment layer 5 forms the outer surface of the camouflage material.



As noted in the official action, the Examiner has not considered the structural arrangement of the elements as combined with the fabric. It is the Applicant's position that the structure of the applied reference Pusch '608 as shown and described above, is substantially different from that of the presently claimed invention. The structure of Pusch '608 is particularly pertinent because of the specified function of Pusch '608 as winter camouflage, i.e., "... a camouflage material for nets, blankets or clothing which is suitable for use during winter when the ground is snow covered" (column 1, lines 13-15).

It is also important to note from a structural standpoint, that the Pusch et al. '608 winter camouflage includes the metallized layer so that "... the camouflage acts as a mirror reflecting the cold sky and snow, that is the emissivity is quite a bit lower than that of snow" (column 2, lines 35-37). This feature is an important structural and functional part of the applied reference as further shown by the application of a visual camouflage on top of the metallized layer at column 2, lines 41-48, where the camouflage material "... is metallized on one side by vapor

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deposition. A printed coating of paint is applied to the metallized surface in white or in any pattern of grass green color separated by large spaces of white to imitate white snowy landscape".

Different from Pusch et al. '608, the present invention is particularly concerned with obtaining a high reflectance of the thermal radiation from a camouflaged heat source. As described in the Applicant's Background of the Invention with respect to known camouflage nets such as Pusch et al. '608, at paragraph 8,

However, the camouflage performance afforded by the camouflage net becomes problematical when there are hot spots, such as an engine of a motor vehicle, for example. This is where the thermal camouflage tarpaulin, mentioned at the beginning, comes in. It stops heat rays from objects which are situated on that side of the thermal camouflage tarpaulin. . .

In order to achieve appropriate camouflage of such heat emitting camouflaged sources the structure of the present invention is specifically different from Pusch et al. '608. An initial difference is recited in Applicant's new claim 14 wherein,

. . . a compound containing IR pigments is supported on the first side of the base textile . . . and a free-standing polyester film is fixed to the second opposite side of the base textile, and an exposed face of the free-standing polyester film has a vapor-deposited coating defining an outer surface of the thermal camouflage tarpaulin which directly reflects thermal radiation.

Keeping these claim recitations in mind, the initial feature of the presently claimed invention different from previous camouflage nets, and not disclosed, taught or suggested by Pusch et al. '608, is that the compound 5 containing the IR pigments is on an opposite side of the base textile 1 from the vapor deposited coating 3. This is because the IR pigments 6 are necessary on an *outer side* of the camouflage tarpaulin to appropriately achieve camouflage in the visible and near infrared region. Importantly, as also set forth in claim 14, the vapor

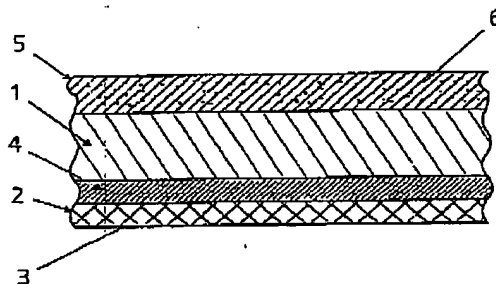
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deposited thermal reflective layer 3 shown in Applicant's figure below is situated on the opposite *inner side* of the tarpaulin to reflect the camouflaged thermal source.



Secondly, as clearly observed in the Applicant's figure, the vapor deposited coating 3 defines the outermost surface of the inner side so as to directly reflect the thermal emissions of the camouflaged source, i.e., there is no protective coating or other layer of material over the vapor deposited surface.

Thus we note that quite different from the present invention, Pusch '608 is backwards and intended to reflect from an outer surface whereas the presently claimed invention is to reflect from an inner surface. A thorough study of Pusch '608 also fails to disclose, teach or suggest a compound containing IR pigments. In addition, the Applicant notes that new independent claim 30 also recites the feature of

an inner side to be placed immediately adjacent the heat source and an outer side to be placed remote from the heat source . . . wherein the exposed surface of the vapor-deposited aluminum coating on the inner side of the thermal camouflage tarpaulin is positioned immediately adjacent the heat source so as to directly reflect thermal radiation from the heat source,

a feature which is not disclosed, taught or suggested in any manner by the cited reference.

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Furthermore, observing the only Figure of Pusch '608, we note that the metallized layer 3 is further covered by a protective coating 4 and the pigment layer 5 in order to form the outer surface and previously discussed reflectivity for the winter camouflage. In the present invention, the vapor deposited coating is now specifically recited as being the outer exposed surface of the thermal camouflage tarpaulin. New independent claim 29, like the other independent claims 14 and 30 also includes similar limitations further defining the metallized IR pigments and vapor deposited aluminum coating on opposing outer sides of the thermal camouflage tarpaulin. This is quite different from Pusch et al. '607 where in fact it is noted that the IR pigments are coated directly atop the metallized coating at column 2, lines 44-47 that "a printed coating of paint is applied to the metallized surface in white or in pattern of green grass separated by large spaces of white to imitate a snowy landscape".

As the Examiner is aware in order to properly support an anticipation rejection under 35 U.S.C. § 102(b), the recited reference must disclose each and every feature and limitation of the presently claimed invention. As described and shown above, Pusch et al. '608 does not disclose, teach or suggest either of the above noted features of the presently claimed invention and therefore the Applicant respectfully requests withdrawal of the anticipation rejection.

Claims 6, 7, 10 and 11, now claims 19, 20, 23 and 24, are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Pusch et al. '608. Claim 12, now claim 25, is rejected, under 35 U.S.C. § 103(a), as being unpatentable over Pusch et al. '608 as applied to claim 1 and further in view of Gehrhardt et al. '867. As all the new dependent claims are dependent upon claim 14 which is believed allowable in view of the above discussed recitations and remarks, the Applicant believes these claims to be allowable as well. However, in order to be fully responsive to the Official Action the Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

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With respect to the Examiner's position that it would be obvious to one of ordinary skill in the art to provide a "sufficient" amount of the adhesive based on a desired adhesive strength, the Applicant points out that claims 6 and 7, now claims 19 and 20, are not claiming a "sufficient" amount of adhesive, in fact the Applicant has specifically claimed a range of 40-80g/m² and 50-60g/m² respectively. As the Examiner is aware, in order to properly support an obviousness rejection under 35 U.S.C. § 103(a) the cited reference must provide some disclosure, teaching or suggestion which would lead one of skill in the art to achieve the presently claimed invention, in this case the specific range of material weight. Under Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1966) and as set forth in MPEP §706.02, in order to establish a prima facie case of obviousness, the Examiner must (1) set forth differences in the claim over the applied references; (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and (3) explain why the proposed modification would be obvious.

To satisfy step (3), the Examiner must identify where the prior art provides a motivating suggestion to make the modifications proposed in step (2), *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). The mere fact that the prior art may be modified as suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification, *In re Fritch*, 922 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). If the Examiner maintains that there is still an explicit or implicit teaching or suggestion in the prior art, he/she must indicate where such teaching or suggestion appears in the applied references. *In re Yates*, 663 F.2d 1054, 211 USPQ 1149, 1151 (CCPA 1981).

The Applicant notes that the basis weights as disclosed and claimed in this invention are particularly important to the overall invention as discussed at paragraph 17 and 18 of the Applicant's specification,

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[t]he construction of the camouflage tarpaulin using the basis weights mentioned additionally provides high flexibility over a broad temperature range coupled with a very good mechanical strength and low flammability. The camouflage tarpaulin, according to the present invention, provides a high reflectance of about 80% not only with regards to solar radiation, but also with regard to thermal radiation from the heat source.

Thus, it is an important feature of the present invention that the desired flexibility and strength based on such claimed basis weights be combined with the required structural layering to achieve the necessary strength and functionality of the present invention. In the present case, we note that the particular material, weights and ranges produce in the specific structure of the present invention produce a reflectance of above 80% as specifically recited in paragraph 18 of the Applicant's specification.

Keeping the above in mind, and with regards to the rejection of claim 10-11, we note that Pusch '608 teaches a range of plastic compound of merely 3-15 g/m². This range is so expressly different from the Applicant's claimed ranges of 60-120g/m² and 80-100g/m² that it is the Applicant's position that such a different disclosure teaches explicitly away from the presently claimed invention. Again, we note that the particular basis weights are an important characteristic feature of providing both a desired reflectivity as well as strength and durability in the presently claimed invention. As best the Applicant understands the Examiner's argument regarding "optimization", the Applicant notes that there is a specific limit and range of 60-120 or in claim 10 or 80-100 in claim 11 relating specifically to the claimed invention. The Examiner fails to explain or show where in the Pusch et al. '608 reference, such optimization is taught beyond the 3-15 g/m² range. In fact, because Pusch et al. '608 discloses a camouflage net or material for an entirely different purpose from the present invention, there is no teaching or suggestion regarding "optimization" for a thermal camouflage as currently recited in the Applicant's independent claims:

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Turning to the rejection of claims 12 and 13, over Pusch '608 in view of Gehrhardt et al. '867, we note that the present invention as in Pusch '608 is for the military field and relates to a thermal camouflage tarpaulin for hiding heat sources. The Gehrhardt et al. '867 reference refers to a fabric for clothing for a workman and is entirely different field and function. Therefore, the Applicant does not believe that there is any disclosure, teaching or suggestion which would lead one of ordinary skill in the art to combine these references as required by case law. Courts have long held that there must be some teaching in the references to support any combination.

[u]ndoubtedly, these patents disclose, individually, the separate elements or components of the invention. However, none of them teaches or even suggests combining these various elements or components in the manner taught by Silman, and it is well settled that references may not be combined where there is no suggestion in any of the references that they can be combined to meet the recitations of the claims. United Merchants and Manufacturers, Inc. v. Commissioner of Patents, 139 USPQ 199, 200 (DC, District of Columbia 1963).

Thus, there are at least three highly disparate aspects of the Pusch et al. '608 reference from that of the present invention (1) the specific structure of the camouflage is different, (2) the orientation of the critical reflective structure and material layering of Pusch et al. '608 is on an outer side of the camouflage material and finally (3) the present invention is intended to camouflage a heat source in any environment where Pusch et al. '608 is intended match the relative atmospheric characteristics in winter time.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised anticipation and obviousness rejections should be withdrawn at this time. If the Examiner

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disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Pusch et al. '608 and/or Gehrhardt et al. '867 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Scott A. Daniels, Reg. No. 42,462
Customer No. 020210
Davis & Bujold, P.L.L.C.
Fourth Floor
500 North Commercial Street
Manchester NH 03101-1151
Telephone 603-624-9220
Facsimile 603-624-9229
E-mail: patent@davisandbujold.com

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